

The opinion in support of the decision being entered
today was not written for publication and
is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DENNIS J. CUNNINGHAM

Appeal No. 2004-0312
Application No. 09/277,534

ON BRIEF

Before GARRIS, PAK, and WARREN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of
claims 1-3, 5, 7-12, 14 and 15. The only other claims in the
application, which are claims 4, 6, 13 and 16-20, stand withdrawn
from further consideration by the examiner.

Appeal No. 2004-0312
Application No. 09/277,534

The subject matter on appeal relates to a glass workpiece transporting and locating system, to a glass processing machine, and a to glass workpiece feeding device. With reference to the appellant's drawing, the appealed subject matter comprises a glass cutting table 20, having a movable bridge 24 associated therewith; the bridge includes vacuum chucks 42 which overlap a glass workpiece W supported on a glass workpiece feeding table 34 whereby the workpiece can be engaged by the chucks for feeding the workpiece to the glass cutting table (i.e., via movement of bridge 24); and means (e.g., see elements 38, 40 and 44) for aligning the glass workpiece which is supported on the glass workpiece feeding table. This appealed subject matter is adequately illustrated by independent claims 1, 7 and 14, a copy of which taken from the appellant's brief is appended to this decision.

The references set forth below are relied upon by the examiner in the § 102 and § 103 rejections before us:

Curtze et al. (Curtze)	3,424,357	Jan. 28, 1969
Lisec (Lisec '555)	4,667,555	May 26, 1987
Perobelli et al. (Perobelli)	5,507,616	Apr. 16, 1996
Lisec (Lisec '244)	5,944,244	Aug. 31, 1999
	(effectively filed May 27, 1997)	

Appeal No. 2004-0312
Application No. 09/277,534

All of the claims on appeal stand rejected under the second paragraph of 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter which the appellant regards as his invention.

Claims 1-3, 5, 14 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Perobelli.

Claims 1, 5 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Curtze.

Claim 14 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Lisec '555.

Claims 1 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lisec '555 and Curtze.

Claims 7-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable Lisec '555 in view of Lisec '244.

Finally, claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Curtze in view of Lisec '244.

On page 6 of the brief (i.e., the second supplemental appeal brief filed January 23, 2003), the appellant indicates that the appealed claims do not stand or fall together. Accordingly, to

Appeal No. 2004-0312
Application No. 09/277,534

the extent necessary for assessing the merits of the above noted rejections, we will individually consider each claim which has been separately grouped and argued by the appellant. See 37 CFR 1.192(c) (2002).

For a complete exposition of the opposing viewpoints expressed by the appellant and by the examiner regarding the rejections before us, we refer to the aforementioned brief and reply brief as well as to the answer.

OPINION

For the reasons which follow, we will sustain the examiner's § 102 rejection of claim 14 as being anticipated by Perobelli, but we will not sustain any of the other rejections advanced on this appeal.

The inquiry under the second paragraph of § 112 is to determine whether the claims set out and circumscribe a particular area with a reasonable degree of precision and particularity. It is here where the definiteness of the language employed must be analyzed, not in a vacuum but, always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one

Appeal No. 2004-0312
Application No. 09/277,534

possessing the ordinary level of skill in the pertinent art. In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971).

We find that the claim language under review, when analyzed as instructed above, circumscribes an area of subject matter with a reasonable degree of precision and particularity. Contrary to the examiner's viewpoint, the appealed claims are not rendered indefinite simply because the subject matter thereof is defined in terms of structure, such as a glass cutting table, which is not part of the claimed subject matter. As correctly indicated by the appellant, defining claimed subject matter in such terms is common and aids in understanding this subject matter by describing it with respect to the environment (e.g., a glass cutting table) in which it is used. Further, we cannot agree with the examiner that such description confuses whether the structure in question, such as a glass cutting table, is part of the claimed subject matter (i.e., a combination) or not (i.e., a sub-combination). Indeed, the examiner's position on this matter is undermined by the fact that his claim interpretation vis-a-vis the application of prior art generally corresponds to the claim interpretation given by the appellant in the reply brief.

The examiner also considers the appealed claims to be indefinite because structural cooperation is allegedly lacking for certain claimed features. However, a claim is not necessarily indefinite merely because the claim does not recite the structural cooperation of claimed features or elements. See generally, In re Gustafson, 331 F.2d 905, 141 USPQ 585 (CCPA 1964). The lack of such recitation simply causes a claim to be broad, not indefinite, as properly explained by the appellant. In re Gardner, 427 F.2d 786, 788, 166 USPQ 138, 140 (CCPA 1970).

For the above stated reasons, we cannot sustain the examiner's § 112 second paragraph rejection of claims 1-3, 5, 7-12, 14 and 15.

We will sustain, however, the examiner's § 102 rejection of claim 14 as being anticipated by Perobelli. As reflected by his comments on page 3 of the reply brief, the appellant, in essence, concedes that claim 14 is directed to the sub-combination of "a workpiece feeding table" and "at least one vacuum chuck". We share the examiner's finding that the Perobelli apparatus includes elements which correspond to this sub-combination in terms of both structure and function. In particular, the examiner has identified patentee's stand 9 as corresponding to

the here claimed workpiece feeding table and patentee's suckers 41 as corresponding to the here claimed at least one vacuum chuck.

There is no persuasive merit in the appellant's belief that this rejection is improper because Perobelli's aforementioned structure is not used in the environment of or in cooperation with a glass cutting table having a movable bridge extending thereacross which is the use described in appealed claim 14. The critical consideration here is that claim 14 fails to distinguish, in terms of either structure or function, over the above discussed elements of patentee's apparatus. See In re Yanush, 477 F.2d 958, 959-60, 177 USPQ 705, 706 (CCPA 1973), and In re Glass, 474 F.2d 1015, 1019, 176 USPQ 529, 532 (CCPA 1973). Stated otherwise, the structure and function involved in moving Perobelli's sheets 10 from stand 9 via suckers 41 corresponds to the structure and function involved in moving appellant's workpiece W from feeding table 34 via vacuum chucks 42 in accordance with the requirements of appealed claim 14.

Under these circumstances, it is appropriate that we sustain the examiner's § 102 rejection of claim 14 as being anticipated by Perobelli.

On the other hand, we cannot sustain the corresponding § 102 rejection based on Perobelli of claims 1-3, 5 and 15. In this regard, claim 1 (and correspondingly claims 2, 3 and 5 which depend therefrom) requires "a means for aligning the glass workpiece which is supported on said glass workpiece feeding table", and claim 15 requires "a retractable stop on said bridge engaging an edge of the glass workpieces on said workpiece feeding table for aligning the glass workpieces". The examiner considers elements 25 or 28 of Perobelli's apparatus to satisfy these claimed features. We cannot agree. This is because patentee's aforementioned elements are not associated in any way with stand 9 (which the examiner equates to the appellant's glass workpiece feeding table) or the separating sheets (which the examiner equates to the appellant's glass workpieces) thereon and therefore are plainly incapable of performing the function of aligning a workpiece on a table as required by the claims under review.

The § 102 rejections based on Curtze and Lisec '555 respectively also cannot be sustained. Each of independent claims 1 and 14 requires at least one vacuum chuck which possesses the capability of overlapping a glass workpiece supported on a glass workpiece feeding table when in the position

defined by these claims (i.e., when the claimed feeding table is adjacent a cutting table and when the claimed at least one vacuum chuck is at one end of the previously mentioned cutting table). In expressing his anticipation position, the examiner has failed to address whether the vacuum chuck of Curtze and Lisec '555 would possess this overlapping capability. It is clear to us, however, that the prior art vacuum chucks would be incapable of performing the overlapping function required by the here claimed vacuum chucks. This is because the vacuum chucks of Curtze and Lisec '555 are located completely within the boundaries of their respective cutting tables. In contrast, the appellant's vacuum chucks 42 extend beyond the boundaries of his cutting table 20 so as to overlap feeding table 34 and the glass workpiece W thereon. We here emphasize that a claim is not anticipated by prior art which lacks structure capable of performing a functional limitation of the claim. In re Mott, 557 F.2d 266, 269, 194 USPQ 305, 307 (CCPA 1977); Compare in re Yanush, 477 F.2d at 960, 177 USPQ at 706 and In re Glass, 474 F.2d at 1019, 176 USPQ at 532.

For these reasons, we cannot sustain either the § 102 rejection of claims 1, 5 and 14 based on Curtze or the § 102 rejection of claim 14 based Lisec '555.

Appeal No. 2004-0312
Application No. 09/277,534

The above discussed deficiencies of Curtze and Lisec '555 would remain even if modified in the manner proposed by the examiner in his § 103 rejections. It follows that we additionally cannot sustain the § 103 rejection of claims 1 and 5 as being unpatentable over Lisec '555 and Curtze. Moreover, because appealed independent claim 7 requires at least one vacuum chuck having the same capability discussed above, we likewise cannot sustain the § 103 rejection of claims 7-9 based on Lisec '555 in view of Lisec '244 or the § 103 rejection of claims 7 and 8 based on Curtze in view of Lisec '244.

In summary: we have sustained the examiner's § 102 rejection of claim 14 as being anticipated Perobelli; however we have not sustained any of the other rejections advanced by the examiner on this appeal.

The decision of the examiner is affirmed-in-part.

Appeal No. 2004-0312
Application No. 09/277,534

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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Administrative Patent Judge)	

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Appeal No. 2004-0312
Application No. 09/277,534

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APPENDIX
Claims 1, 7, 14

1. A glass workpiece transporting and locating system for a glass cutting table comprising:

a bridge extending across the glass cutting table and movable along the length of the glass cutting table;

a glass workpiece feeding table adjacent the glass cutting table and supporting a glass workpiece to be fed to the glass cutting table;

at least one vacuum chuck carried by said bridge at a position overlapping said glass workpiece feeding table when said bridge is at one end of the glass cutting table; and

a means for aligning the glass workpiece on said glass workpiece feeding table.

7. A glass processing machine comprising:

an air float table for supporting a glass workpiece thereon;

a glass workpiece processing tool engagable with the glass workpiece supported on said air float table;

a workpiece feeding table adjacent said air float table supporting glass workpieces to be fed to said air float table; and

at least one vacuum chuck movable along at least a portion of said air float table and a portion of said workpiece feeding table, said at least one vacuum chuck engagable with glass workpieces on said workpiece feeding table for feeding the glass workpieces to said air float table.

APPENDIX
cont.

14. A glass workpiece feeding device for a glass cutting table, the cutting table having an air float table supporting glass workpieces, a bridge extending across said air table movable along the length of the air table and supporting a glass cutting head for scoring glass workpiece supported thereon, said workpiece feeding device including:

a workpiece feeding table adjacent the air table of the glass cutting table and supporting glass workpieces to be fed to the air table; and

at least one vacuum chuck attached to the bridge of the glass cutting table, said at least one vacuum chuck positioned to overlap said glass workpiece feeding table when the bridge is at one end of the glass cutting table whereby said at least one vacuum chuck is engagable with the glass workpiece on said workpiece feeding table for feeding the glass workpiece to the air flow table.